

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**EDWARD DIAL,**

**Plaintiff,**

**v.**

**1:12-cv-2805-WSD**

**DEPUTY DAVIS (RT), GWINNETT  
COUNTY SHERIFF  
DEPARTMENT,**

**Defendants.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Janet F. King's Final Report and Recommendation ("R&R") [5] that this action be dismissed for Edward Dial's ("Plaintiff") failure to comply with a lawful Order of the Court.

**I. BACKGROUND**

On November 9, 2012, the Magistrate Judge ordered, for the second time, Plaintiff, a prisoner, to pay the full \$350.00 filing fee in this action or submit an *in forma pauperis* ("IFP") application within thirty (30) days. (R&R at 1). The Magistrate Judge advised Plaintiff that if he did not pay the filing fee or submit an IFP application, this action could be dismissed. (*Id.*).

On January 3, 2013, after Plaintiff failed to comply with the lawful order of the Court, the Magistrate Judge issued her Final R&R recommending that Plaintiff's Complaint be dismissed without prejudice for failure to obey a lawful order of the Court. (Id. at 2).

To date, Plaintiff has not paid the filing fee, filed an IFP application, and has not filed objections to the Final R&R.

## **II. DISCUSSION**

A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which a party has not asserted objections, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Because Plaintiff did not object to the R&R, the Court reviews it for plain error.

The Court has reviewed the findings and recommendations in the R&R and concludes plain error was not committed in reaching them. Local Rule 41.3 provides that the Court may dismiss a civil case for want of prosecution if a plaintiff fails to obey a lawful order of the Court. L.R. 41.3 (A)(2), N.D. Ga.

Plaintiff failed to comply with the Court's November 9, 2012, Order by failing to pay the filing fee or submitting an IFP application. Accordingly, the Court finds this action should be dismissed without prejudice.

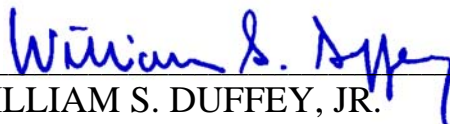
### **III. CONCLUSION**

For the foregoing reasons,

**IT IS HEREBY ORDERED** that the Court **ADOPTS** Magistrate Judge Janet F. King's Final Report and Recommendation [5].

**IT IS FURTHER ORDERED** that Plaintiff's Complaint [1] is **DISMISSED WITHOUT PREJUDICE** pursuant to Local Rule 41.3 A.(2).

**SO ORDERED** this 30th day of January, 2013.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE